



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Council of Higher Education for Virginia
Virginia Administrative Code (VAC) citation	8 VAC 40-31
Regulation title	Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas, and Certificates
Action title	Amend, modify or delete provisions of the regulations related to the administration of certified postsecondary institutions operating in Virginia.
Date this document prepared	May 12, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

Chapter 991 of the 2004 Acts of Assembly was enacted on July 1, 2004, repealing the authority of the Virginia Board of Education to regulate proprietary schools and granting it to the State Council of Higher Education for Virginia (SCHEV). SCHEV has always had oversight for private non-profit and out-of-state degree-granting institutions. 8 VAC 40-31 et. seq., which governs the certification of private and out-of-state postsecondary institutions to operate in Virginia, was finalized August, 2006 combining the previous regulations that governed the proprietary schools with the regulations that governed private and out-of-state institutions. Since that time, staff have identified several areas of consumer protection that were not included in the original regulations. Also, with the increasing use of technology in higher education, e.g. distance learning, it was determined that the current regulations failed to provide sufficient guidance to institutions using that modality.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The State Council of Higher Education for Virginia is granted explicit authority to promulgate regulations necessary to implement the provisions of § 23-276.3 of the Code of Virginia which states: "The State Council of Higher Education for Virginia shall adopt, pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.) such regulations as may be necessary to implement the provisions of this chapter. The Council's regulations shall include, but need not be limited to, (i) procedures by which a school may apply for Council approval to confer degrees in Virginia; (ii) measures designed to ensure that all postsecondary schools that are subject to the provisions of this chapter meet minimal academic standards; (iii) protections for students pursuing postsecondary education opportunities in schools subject to the provisions of this chapter; and (iv) information to assist persons who rely on postsecondary degrees, diplomas, and certificates in judging the competence of individuals."

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The regulations governing private and out-of-state postsecondary institutions are designed to ensure the certified schools meet minimal academic standards, provide protections to students pursuing postsecondary educational opportunities at these schools, and provide information to persons who rely on postsecondary degrees in judging the competence of individuals. Amending, modifying and deleting the current version of 8 VAC 40-31 et. seq. will ensure that the certified institutions continue to provide a valuable service to the citizens of the Commonwealth of Virginia.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The proposed revisions to the current regulations include: clarification of certain defined terms; addition of certain terms; modifications to advertising/marketing requirements; clarification of the exemption for religious institutions, as well as schools, programs, degrees, diplomas and certificates exempt from Council action; clarification of action taken against a previously exempted institution whose authorization to grant or confer degrees is revoked; modifications to the application for certification criteria; enhancement of faculty academic attainment requirements; clarification of student records maintenance expectations; clarification of financial reporting requirements; addition of telecommunication program standards; revision of tuition refund policy; addition of leave of absence provisions; addition of guidance for institutions that require internship, externships and production work as part of the institution's educational requirement; addition of equipment and facilities standards; clarification of the use of the terms "college" and "university"; modification of the change of ownership procedure; addition of specific actions that may result in the suspension or revocation of an institution's certificate to operate; modifications of the procedures for conducting fact-finding conferences and hearing, in accordance to the APA; revision of the fee structure to ensure fairness, and to provide for sufficient revenue to support the

costs of POPE operations and a proportionate share of SCHEV's operations (POPE is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations); addition of a specific teach-out procedure in the event of a school closure; and the deletion of the Freedom of Information Act information, as all documents retained by SCHEV are subject to the Freedom of Information Act.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

SCHEV could continue using the existing regulations, however, consumers (students) will have limited protections against postsecondary institutions operating in Virginia. Certain areas of clarification, though not all, in the proposed regulations could be addressed by the creation of guidance documents. However, the guidance documents themselves would not have desired clarity without profound changes in regulations.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email or fax to Linda H. Woodley, Director, Private and Out-of-State Postsecondary Education, State Council of Higher Education for Virginia, 101 N. 14th Street, James Monroe Building, Richmond, VA 23219, lindawoodley@schev.edu, fax (804) 225-2604. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

SCHEV will form a Regulatory Advisory Panel. The RAP will consist of administrators of the regulated institutions and a representative of the Virginia Career College Association.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this regulation will have a direct impact on the institution of the family or family stability. However, the improved oversight of private and out-of-state postsecondary institutions will strengthen the administration of the schools and expand consumer protection.